United Nations

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/888
4 August 1998

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 888

Case No. 978: SOOKIA

Against: The Secretary-General of the International Maritime Organization

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Mayer Gabay, Vice-President, presiding; Mr. Julio Barboza; Mr. Chittharanjan Felix Amerasinghe;

Whereas, on 15 May 1997, Bashir Ahmad Sookia, a former staff member of the International Maritime Organization (hereinafter referred to as IMO), filed an application requesting the Tribunal, to order, inter alia:

"1) Rescission of the ... termination of his employment ...

OR

Payment of the sum of £300,000 in lieu [thereof].

2) Specific performance of Respondent's obligations under staff regulation 9.3(b) of the Staff Regulations and Staff Rules.

3) Payment of the sum of £50,000 as compensation for the injury sustained."

Whereas the Respondent filed his answer on 19 December 1997;

Whereas the Applicant filed written observations on 28 January 1998;

Whereas the facts in the case are as follows:

The Applicant entered the service of IMO on 3 April 1978, on a fixed-term appointment at the G-2, step I level, as a Messenger in the Administrative Division, Common Services Section. His appointment was extended successively until 1 July 1979, when the Applicant was granted a probationary appointment. On 29 October 1980, his appointment was converted to a regular appointment, and on 1 August 1981, he was promoted to the G-4, step I level, as a Mailing Clerk.

In December 1988, the Applicant was allegedly involved in an altercation at an office party in which the Chief, Office of General Services, was allegedly assaulted. A disciplinary inquiry was undertaken but it resulted in no formal action.

On 10 November 1989, the Head of Personnel Section informed the Applicant, "that the Secretary-General has decided to move you from the Central Registry, Office of General Services to the TCD [Technical Co-operation Division] Registry, pending further arrangements". In a memorandum dated 18 January 1990, the Applicant requested the Secretary-General to review his situation, stating "it would only be fair to send me back to my old job as Mailing Clerk which I am settled in." In a reply dated 31 January 1990, the Head of Personnel Section informed the Applicant, "I am writing to confirm that the Secretary-General has decided to second you, with immediate effect, to the TCD Registry until further notice." From 1 May 1991 to October 1992, the Applicant served as Mailing Clerk in the TCD Registry.

An exchange of correspondence ensued between the Applicant and the Respondent concerning the Applicant's placement and performance. On 29 March 1993, the Applicant wrote to the Secretary-General, protesting his removal from his post without an alternative suitable post. On 18 June 1993, the Director of Administration informed the Applicant that the Secretary-General had decided to transfer him to the post of Inventory Clerk, at the G-4

level, in the Office of General Services, Administrative Division, with effect from 1 July 1993. In a reply dated 30 June 1993, the Applicant stated: "I will not take the post of Inventory Clerk ..."

On 20 August 1993, the Applicant informed the Director of Administration that he would accept the post of Inventory Clerk, as of 1 September 1993, "as a temporary alternative ..." He assumed the post on that date.

On 3 September 1993, the Applicant requested the Director of Administration to confirm the decision to remove him from the post of Mail Clerk and appoint him to the post of Inventory Clerk. On the same date, he wrote to the Secretary-General, and lodged an appeal with the Joint Appeals Board (JAB) against that decision.

On 12 October 1994, the JAB submitted its report to the Secretary-General. It recommended that:

> "...
>
> 7. Under the circumstances the Board strongly believes that [the Applicant] could not continue to be gainfully employed and some form of separation should be negotiated to save him and the Organization further aggravation. In view of the time that has elapsed since this matter began, the Board feels that a figure closer to the £50,000 claimed than the £20,000 originally offered might be appropriate."

On 21 November 1994, the Secretary-General transmitted a copy of the JAB report to the Applicant and informed him, inter alia, as follows:

> "You will note that the JAB found that the transfer of your post was well within my competence and that the JAB does not support you in your other claims.
>
> Finally, I can confirm that my decision regarding the recovery of your salary, for the months of July and August 1993, stands."

The Applicant lodged an appeal with the Administrative Tribunal against this decision.

A note for the file dated 24 April 1995, recorded the content of discussions held at a meeting on 24 April 1995, between the Director of Administration, the Chief of the Office of General Services and the Applicant in which the Director of Administration restated the Administration's offer of an agreed termination under which the Applicant would "be given the **maximum termination benefit allowed under staff regulation 9.3(b) and staff rule 109.2(a), i.e., one year salary plus 50 per cent and three months pay in lieu of Notice**." The Applicant was asked to inform the Head of Personnel Section, in writing, by 1 May 1995, whether he accepted these terms. Failing to do so would be considered as his having rejected them. In that case, the Organization would have "no option but to formally **notify him of termination of his appointment under staff regulation 9.1(c) in which case his benefits would be one year's salary and three months Notice - commencing 1 May 1995**."

On 25 April 1995, the Director, Administrative Division, wrote to the Applicant as follows:

> "... The Organization is still prepared to offer you an agreed termination in accordance with the last sentence of staff regulation 9.1(a) and would give favourable consideration to giving the maximum indemnity available under staff regulation 9.3(b) i.e. 12 months pensionable remuneration less staff assessment plus 50 per cent. It is considered that you have had ample time since 15 March to make up your mind and, if your consent to an agreed termination is not forthcoming by 1 May 1995 the three months' notice required under staff rule 109.2(a) will be effective from that date. This decision has been taken by the Secretary-General in the interest of the good administration of the Organization in accordance with the provisions of Article IX of Staff Regulations."

On 26 May 1995, the Director, Administrative Division, informed the Applicant that his appointment was being terminated and that because he "did not consent to an agreed termination in accordance with the last paragraph of staff regulation 9.1(a), the three months' notice period required took effect from 1 May 1995 ...".

On 29 May 1995, the Applicant wrote to the Director of Administration, the Head of Personnel Section, the Director of the Legal Division and the President of the Staff Association, stating as follows:

> "This is to inform you that your decision to terminate my service with IMO is unlawful and unadministrative and that your 3 months notice of termination is void under regulation 9.1(a) of Article IX of the Staff Regulations and Rules. Regulation 9.1(a) provides that 'the Secretary-General may terminate the appointment of a staff member who holds a permanent appointment if such action would be in the interest of the good administration of the Organization and in accordance with the standards required by the Organization, provided that the action is not contested by the staff member concerned.'
>
> You are misusing regulation 9.1(a) of Article IX as I have contested the action taken by you against me in my letter dated 1st May 1995 and I am still contesting it." (Emphasis in original)

In a reply dated 2 June 1995, the Secretary-General stated as follows:

> "I would refer to the memorandum to you of 25 April from the Director, Administrative Division, which attached a note of his meeting with you the previous day. That attachment states clearly in paragraph 4 that failure on your part to accept the offer of an enhanced indemnity payment, on the basis of an agreed termination, would otherwise lead to termination of your appointment under staff regulation 9.1(c)(not 9.1(a)). Neither staff regulation 9.1(a) nor staff regulation 9.1(b) apply to staff employed on the basis of regular contracts; regulation 9.1(a) deals with staff with permanent appointments and 9.1(b) deals with staff on fixed-term contracts. The provisions of staff regulation 9.1(c) applies to other staff members, i.e. staff with regular appointments.
>
> I would recall that the decision to terminate your appointment took place after many months of discussions between you and the Head of Personnel in which you led the Administration to believe that you were prepared to consider an agreed settlement. Similar discussions were held in 1991, as I recall, but were not conclusive. An offer was made to you in good faith by the Administration, reflecting the best termination terms that could be made to a staff member under the Staff Regulations i.e. an enhanced indemnity on the same basis as the

provisions of staff regulation 9.3(b). In the same way, I agreed that you be paid three months' salary in lieu of notice, rather than the statutory one month minimum applicable to staff with regular contracts. The fact that you decided not to agree to the offer and to contest the termination does not make my decision to terminate your appointment unlawful or improper since my action was not taken under paragraph 9.1(a) of the Staff Regulations. My action was taken under the provisions of paragraph 9.1(c) of the Staff Regulations in the interest of the Organization and based on you unsatisfactory services.

In conclusion, I have considered your letter of 29 May 1995 but am unable to agree to change my decision to terminate your appointment."

On 15 September 1995, the Applicant lodged an appeal with the JAB against this decision.

On 2 August 1996, the Tribunal rendered Judgement No. 773, in which it upheld the Secretary-General's decision to transfer the Applicant and to deduct payments from his salary for unauthorized absences from work. (Cf. Judgement No. 773, paras. III and IV).

The JAB adopted its report on the Applicant's 15 September 1995 appeal, concerning his termination, on 25 March 1997. Its findings read as follows:

"...

3. In its memo dated 25 April 1995, the IMO Administration notified [the Applicant] that the Organization is prepared to offer an agreed termination in accordance to staff regulation 9.1(a) and staff regulation 9.3(b);

4. Subsequent memo dated 26 May 1995, IMO issued [the Applicant] with a final memo terminating his appointment in accordance to staff regulation 9.1(a) and will receive compensation in accordance with staff rule 109.2(c);

5. [The Applicant] makes two claims in his report dated 15 September 1995 that he was dismissed in accordance with staff regulation 9.1(c) and no payment has been made in accordance to rule 9.3(b) and Annex 3 and final request for compensation in the order of £350.000;

6. The Board reached the conclusion that staff regulation 9.1(c) is irrelevant to the above case and no payment could have been made since the offer was contested; and

7. The Board concurs with [the] previous ... JAB that [the Applicant] could not continue to be gainfully employed and for the sake of consistency, he should receive payment in accordance to regulation 9.3(b) and staff rule 109.2 as specified in the letter of **25 April 1995** from the Director, Administrative Division to [the Applicant]."

On 24 April 1997, the Secretary-General transmitted to the Applicant a copy of the JAB report and informed him as follows:

"It is noted that the JAB recommends that you receive payment in accordance with staff regulation 9.3(b); that is to pay a termination indemnity payment not more than 50 per cent higher than that which would otherwise be payable.

In view of the fact that your appointment was terminated under staff regulation 9.1(c), as specified in my letter to you dated 2 June 1995, regulation 9.3(b) is inapplicable. Therefore I have decided not to accept the recommendation of the JAB for payment in accordance with regulation 9.3(b). You have already received payment in accordance with staff rule 199.2[sic]."

On 15 May 1997, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The termination of the Applicant's employment was not in accordance with the Staff Regulations and Staff Rules and should therefore be rescinded. Although the Respondent now claims that the Applicant was terminated under staff regulation 9.1(c), the Respondent had previously given notice of the Applicant's termination under staff regulation 9.1(a). The termination under staff regulation 9.1(a) is invalid because it

required the Applicant's consent, and the Applicant contested his termination.

2. The Respondent failed to fulfil his obligations under staff regulation 9.3(b) because he did not pay the Applicant the appropriate termination indemnity in accordance with that regulation.

Whereas the Respondent's principal contentions are:

1. The Applicant was terminated solely in the interests of the Organization.

2. Since the relationship between the Applicant and the Organization and between the Applicant and other staff had irreparably broken down, termination was the only option available to the Respondent.

3. The Respondent's attempts to identify suitable positions within the Organization became impossible as Heads of departments reported there were no vacancies for the Applicant.

4. The Applicant's claims related to procedural rather than substantive issues of termination. The termination of the Applicant's appointment was carried out under the proper procedure.

5. The decision to terminate the Applicant's employment was lawful under the Staff Regulations and Rules.

6. The Applicant is not entitled to any payments other than those already accepted by the Applicant.

7. The Applicant is not entitled to any specific performance of any obligations under regulation 9.3(b) of the Staff Regulations and Rules.

8. The Applicant has not sustained any injury and is therefore not entitled to any compensation.

The Tribunal, having deliberated from 9 July to 4 August 1998, now pronounces the following judgement:

I. The Applicant was the holder of a regular appointment, as defined under rule 104.4 of the IMO Staff Rules. The Applicant and the Respondent engaged in several discussions concerning a possible agreed termination of the Applicant's appointment. By memorandum dated 25 April 1995, the Director, Administrative Division, transmitted to the Applicant the Respondent's final offer, which consisted of a termination in accordance with staff regulation 9.1(a) and "favourable consideration to giving the maximum indemnity available under staff regulation 9.3 (b), i.e., 12 months pensionable remuneration less staff assessment plus 50 per cent." The Director, Administrative Division further explained that if the Applicant did not accept the offer by 1 May 1995, the Respondent would terminate the Applicant's appointment "in the interest of the good administration of the Organization in accordance with the provisions of Article IX of Staff Regulations". The Applicant did not accept. By memorandum dated 26 May 1995, the Respondent informed the Applicant that his appointment would be terminated.

II. The termination of regular appointments, such as that of the Applicant, is governed by IMO staff regulation 9.1(c), which provides as follows:

> "In the case of all other staff members [i.e., other than permanent staff members] ..., the Secretary General may, at any time terminate the appointment, if, in the Secretary General's opinion, such action would be in the interest of the Organization."

The notice period and compensation for termination of a regular appointment are governed by staff regulation 9.3(a) and staff rule 109.2(b) . Under staff rule 109.2 (b), a minimum of thirty days' written notice is required. The notice period may be substituted

by compensation in the amount the staff member would have received had the date of termination been at the end of the notice period. In the present case, the Respondent decided to give the Applicant a three-month notice period commencing 1 May 1995. In the termination letter dated 26 May 1995, the Respondent informed the Applicant that he would not be required to work beyond 31 May 1995, and that he would therefore receive compensation in lieu of notice for the last two months of such notice period. As compensation, the Applicant was informed that he would be paid "in accordance with staff regulation 9.3(b) and annex 3 to the Staff Regulations ... 12 (twelve) months of pensionable remuneration less staff assessment."

III. The Applicant bases his case on the Administration's decision to use a method of termination normally applicable only to staff members with a permanent appointment. The Administration partially corrected that erroneous decision when it applied staff rule 9.1(c) instead of 9.1(a), and terminated the Applicant "in the the interest of the Organization".

IV. The JAB found, however, "that staff regulation 9.1.(c) is irrelevant to the above case and no payment could have been made since the offer was contested", apparently because the original offer was made "in accordance to staff regulation 9.1(a) and staff regulation 9.3(b)." The JAB concluded that "for the sake of consistency, [the Applicant] should receive payment in accordance to regulation 9.3 (b) and staff rule 109.2 as specified in the letter of 25 April 1995 from the Director, Administrative Division to [the Applicant]". It appears that the JAB considered the Respondent's offer to the Applicant, which would have given the Applicant more favourable treatment than was required under the rules, as having in some way bound the Respondent even after the Applicant rejected the offer of agreed termination.

V. The Tribunal is of the view that because the Applicant was a holder of a regular appointment, staff regulation 9.1 (c) is strictly applicable in this case. The Tribunal fails to understand why the JAB purports to base its conclusion on "consistency". The Respondent's initial offer to apply terms that were more favourable than what the rules require for holders of regular appointments, in no way changed the nature of the Applicant's appointment. The Applicant's failure to accept that offer permitted the Respondent to terminate his appointment, without his consent, in the interest of the organization, as provided under staff regulation 9.1(c), governing termination for holders of regular appointments. The Tribunal finds no inconsistency in the Respondent's decision not to abide by the terms of the agreed termination that the Applicant rejected.

VI. The Tribunal takes note that both panels of the JAB involved in this case concurred that the separation of the Applicant from his post was in the interest of both the Applicant and the Respondent, as both JAB panels concluded that the Applicant "could not continue to be gainfully employed".

VII. The Applicant received exactly what was due him and more. He received the termination indemnity to which he was entitled under Annex 3 to the Staff Rules and Regulations. In addition, although he was only entitled to thirty days' notice of termination, he was given three months' notice, two months of which were paid to him as compensation in lieu of notice. Thus, he received two months' additional pay without being required to work.

VIII. For the foregoing reasons, the Applicant's pleas are rejected in their entirety.

(Signatures)

Mayer GABAY
Vice-President, presiding

Julio BARBOZA
Member

Chittharanjan Felix AMERASINGHE
Member

Geneva, 4 August 1998

R. Maria VICIEN MILBURN
Executive Secretary

United Nations **AT**

Administrative Tribunal

Distr.
LIMITED

AT/DEC/889
4 August 1998

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 889

Case No. 985: AYOUB

Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Hubert Thierry, President; Mr. Julio Barboza; Mr. Kevin Haugh;

Whereas, on 26 April 1997, Munib Tewfik Ayoub, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees (hereinafter referred to as UNRWA or the Agency), filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 28 July 1997, the Applicant, after making the necessary corrections, again filed an application requesting the Tribunal, inter alia:

"A. 1. [To] clear... the Applicant of any impropriety in relation to the charge of ... misconduct or serious misconduct ... in a written statement such as a circular or an inter-office memorandum ...

2. [T]o compensate [the Applicant] ... [for] the serious damage ... inflicted on [his] moral, social, professional and familial image.

B. ...

2. [To] reinstat[e] the Applicant into the post of Principal, Siblin Training Center i.e. to the post he was holding when the termination measure was taken; or reinstat[e] him into an equivalent post compatible with his qualifications and experience.

3. [To] consider the period of cessation (between the date of termination, 18th Sept. 1995 and date of actual reinstatement) as special leave with full pay.

4. [To] reinstate ... the Applicant as in (2) above ... within a reasonable period of time to be specified by the Tribunal. ...

C. ... pay the Applicant counselling fees and secretarial expenses estimated at US$3,000."

Whereas the Respondent filed his answer on 26 February 1998;

Whereas the Applicant submitted additional documents on 2, 8, 9 and 10 June 1998;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNRWA on 19 October 1968, as a Teacher "B". On 1 September 1969, he received a temporary indefinite appointment as an area staff member, as a Teacher "A", at grade 9, at Jerusalem Preparatory Boys' School, Ghubeiri, Lebanon. On 1 June 1972, the Applicant was appointed as School Supervisor (English) at grade 12. On 1 April 1987, he was promoted to Head, Education Development Unit at grade 15. On 17 September 1992, the Applicant was transferred to the post of Area Education Officer in the Tyre Area Office. On 1 September 1993, he was transferred to the post of Principal, Siblin Training Center (STC), and promoted to grade 16. On 18 September 1995, the Applicant separated from service.

On 27 May 1994, the Chief, Field Education Programme (FEP), Lebanon reprimanded the Applicant, by letter, for not complying with instructions to reside at STC, for giving false statements and for antagonising another Department. In a performance

evaluation report signed in September 1994, the Chief, FEP, attached a document outlining the Applicant's shortcomings and noting the Applicant's improvements and good potential. On 28 February 1995, the Chief, FEP, sent the Applicant a second letter of reprimand for leaving STC without notification and without appointing an Officer-in-Charge. On 6 April 1995, the Chief, FEP, reprimanded the Applicant for refusing to receive an urgent fax from the Chief, FEP.

Also on 6 April 1995, the Chief, FEP, proposed to the Director of UNRWA Affairs, Lebanon (UAL) that a committee be formed to review the admissions lists for STC. The Director, UAL, approved the proposal. On 29 April 1995, the Deputy Principal and Chief Instructor complained to the Chief, FEP, of the deterioration of an already unhealthy atmosphere in STC caused by the Applicant's poor management of STC. On 17 May 1995, the Chief, FEP, informed the Director, UAL, of the findings of the committee investigating the STC admission lists, including that the Applicant had violated the Education Technical Instruction 7/92 by making numerous exceptions to the rules for admission and by approving admissions without referring to higher authorities.

On 9 June 1995, a female student at STC wrote to the Chief, FEP, complaining of unwanted advances by the Applicant. On 30 June 1995, the Chief, FEP, wrote to the Director, UAL, confirming that an STC student had complained about the Applicant and proposing that a letter of censure be issued, that an investigation be commenced, and that the Applicant be immediately suspended from duty. On 30 June 1995, the Chief, FEP, reprimanded the Applicant by letter for failing to meet project deadlines. On 3 July 1995, the Director, UAL, sent a written censure to the Applicant, noting that the Applicant deviated from the rules governing admission of trainees to STC. On 4 July 1995, the Director, UAL, informed the Applicant that he was being suspended without pay, effective at close of business 4 July 1995, pending the outcome of an investigation into the Applicant's allegedly improper behaviour towards a female student.

On 5 July 1995, the Applicant requested the Director, UAL, to reconsider the decision to suspend him without pay and to form a committee to investigate the "ridiculous conspiracy" of certain staff members against him. In a reply dated 6 July 1995, the Director, UAL, explained that, in the light of the serious nature of the charges, the Applicant's suspension would stand, but that a Board of Inquiry had been established to investigate the case. In a written statement dated 10 July 1995, the student recanted her complaint against the Applicant, asserting that certain staff members had pressured her into making false statements. On 21 August 1995, the Board of Inquiry issued its findings. It concluded that the Applicant had put pressure on the student to withdraw her complaint and that "it was not so evident that [the Applicant] had no relationship with the trainee." It further concluded that the Applicant's poor leadership and management style, as well as his disregard for various STC regulations, among other things, had a negative impact on STC.

On 6 September 1995, the Applicant lodged an appeal with the Joint Appeals Board (JAB), contesting his suspension from duty without pay pending investigation.

On 18 September 1995, the Director, UAL, informed the Applicant, inter alia, as follows:

> "...
>
> I note that the Board of Inquiry has identified a number of serious irregularities in the performance of your duties as Principal, Siblin Training Centre, which have occurred over the last year. These include poor judgement and apparent favouritism in the application of Training Centre regulations, your acknowledgement that you admitted a number of students to the Centre without consulting your supervisors, and your refusal to live on campus in accordance with the rules, deciding instead to remain in Beirut while retaining your bungalow at the Centre. The Board found that these irregularities, together with other irregularities committed by you and shortcomings in the performance of your duties as Principal, have produced an unfortunate state of affairs at the Training Centre. As a result of these irregularities and shortcomings, there is now no team spirit, trust or sense of professional mission in the Training Centre Administration. In light of this, I have lost confidence in your ability to continue in your position as Principal of the Training Centre. I have,

therefore, decided to terminate your appointment in the interest of the Agency under the provisions of area staff regulation 9.1, effective close of business on the date of this letter.

..."

On 27 September 1995, the Applicant requested the Director, UAL, to review the decision to terminate his appointment. In response, on 17 October 1995, the Director confirmed "that the decision taken to terminate [the Applicant's] services in the interest of the Agency is maintained."

On 14 November 1995, the Applicant lodged an appeal with the Joint Appeals Board against the termination of his appointment in the interest of the Agency. The JAB adopted its report on 26 November 1996. Its evaluation, judgement and recommendation read, in part, as follows:

"**III. EVALUATION AND JUDGEMENT**

A. The Board noted that the charge of misconduct or serious misconduct was based on the allegations of the student alone with no convincing evidence or witness except the driver who is a friend of her family, and due to this, should have been excluded from testifying because his testimony might have been motivated accordingly. Therefore the Board is of the opinion that his testimony cannot be accepted which brings the situation to the **student's word against the Appellant's word**.

B. The Board also noted that [the] Chief, Field Education Programme, had been able to follow the case on [a] day to day basis without producing any new evidence to support the situation.

C. The Board noted that the Director found the time to meet the student and her mother through the CFEP while he did not for once meet the Appellant or request to meet the Appellant to give him a chance to defend himself.

D. The Board found that the Director should have taken into consideration the post, age, and reputation of the Appellant who is **Principal Siblin Training Centre** vis-a-vis a student.

E. The Board also took note, that from the date of the complaint of the student which is on 9 June 1995, until 4 July 1995, which is the date of the decision to suspend the Appellant from duty without pay, the Appellant did not commit any act to contact the student, except the allegation of the CFEP on behalf of the student which had no proof or convincing basis.

F. Based on the above, the Board noted that the area staff regulation 10.4 ... does not apply to the Appellant's case.

G. The Board here notes that the Report of the Board of Inquiry in paragraph 4.1 under 4.1.1 'In fact, the sequence of events as shown above confirms the persistence of [the student], her mother and her elder sister on following up the complaint and confirms the pressure P/STC has exercised on the family, which appear to have succeeded in the withdrawal of the complaint' that there are no actual facts to back the Board's findings in this issue except **the student, her mother and her elder sister**, furthermore the Board did not interview the student, her mother or her elder sister. The Board also noted that the mother of the student and her elder sister did not actually see any of the alleged practices of the Appellant, therefore the Board finds it surprising that the Board of Inquiry accepted such allegations, also it is surprising that the Board of Inquiry should jump to strange conclusions that the Appellant was at fault and afraid of the consequences.

H. The Board is of the opinion that there is no evidence whatsoever to support that the Appellant was exercising pressure on the student to withdraw the complaint except the student's allegations.

I. The Board noted that under paragraph 4.1.4, 'the Board concluded that it was not so evident that P/STC had no relationship with the trainee' and consequently there was no evidence that the Appellant had a suspected relationship with the student, furthermore, under the same paragraph 'the witnesses when interviewed had nothing to contribute as they saw nothing and only talked about hearsay'.

J. The Board is of the opinion that the case was created by the student and the CFEP, and a driver who was invited to impose on the case.

K. The Board here noted that the direct relationship including the home visits between CFEP and the student led to the enlargement of the case and misled the DUA/L to assume that there is a serious charge of misconduct.

L. In view of the above the Board is of the opinion that the complaint of the student does not have a base for a strong case, a case which led to suspend the Appellant without pay, a Board of Inquiry whose findings surprisingly did not add basis of facts to the case of the student and depending only on the student's letters, and subsequently leading to terminating the appointment of the Appellant.

M. The Board is of the opinion that the atmosphere that was created by the case reflected negatively on the Appellant's performance.

IV. RECOMMENDATION

41. In view of the above and without any oral or written prejudice to any party, the Board unanimously makes its recommendation that all the measures taken against the Appellant starting with his suspension without pay and ending with the termination of his appointment, be reversed and amended.

Furthermore, the Board strongly recommends that the Agency must morally compensate the Appellant by declaring him clear in the case of the student ..."

On 16 December 1996, the Commissioner-General transmitted to the Applicant a copy of the JAB report and informed him as follows:

"... I have carefully reviewed the Board's report and noted its conclusions. The Board was of the opinion that the allegations made against you by the student ... were not credible and should not have led to your suspension from duty without pay. Further, it was of the opinion that the allegations against you were fabricated and not supported by any evidence before the Board of Inquiry. Accordingly, it recommended that the decisions to suspend you without pay and to terminate your services in the interest of the Agency be reviewed and reversed. It also recommended that the Agency declare you clear of any impropriety in relation to the student. I accept the Board's conclusion in this latter point.

> In relation to your suspension without pay, I disagree with the Board's reasoning that such action was inappropriate in this case. Such allegations made by a student against a Principal are [a] very serious matter indeed and it was appropriate that, pending the findings of the Board of Inquiry, you be suspended without pay. Such suspension was, however, without prejudice to your rights. As the charge of serious misconduct against you was not established by the Board of Inquiry, namely it did not find that you had committed any impropriety in relation to the student as alleged, you are entitled to be placed in the same position as if you had not been suspended without pay. Accordingly, I accept the conclusions of the Joint Appeals Board and uphold your appeal on this point. The Field Administration will be in contact with you shortly about the implementation of my decision.
>
> However, in relation to the decision to terminate your services in the interest of the Agency, I disagree with the Board's reasons and conclusion. The Joint Appeals Board ignored the findings of the Board of Inquiry that although you had not committed any misconduct vis-a-vis the student, you had nonetheless committed serious and numerous irregularities as Principal which justified the decision to terminate your services. Accordingly, in relation to this decision, I reject the Board's recommendation and dismiss your appeal."

On 2 January 1997, the Applicant wrote to the Secretary, JAB, complaining that the JAB only considered his first appeal, concerning his suspension without pay, but not the second appeal, concerning his termination. On 8 January and 4 February 1997, the Applicant wrote letters to the Commissioner-General to the same effect. On 27 January and 6 February 1997, respectively, the Secretary, JAB and the Director of Administration and Human Resources wrote to the Applicant, confirming that the JAB had considered both appeals and informing him that if he wished to challenge the decision, his only recourse was to appeal to the United Nations Administrative Tribunal.

On 28 July 1997, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant's suspension from duty without pay was improper. It was based on false charges of misconduct made by the Chief, FEP, in a personal campaign of vengeance against him. The Commissioner-General erred in dismissing the appeal because he relied on the report by the Board of Inquiry, which was not an independent body and which was biased against him.

2. The reasons for the termination of the Applicant's appointment were non-existent and based on bias and on fabricated facts in his personnel file.

Whereas the Respondent's principal contentions are:

1. The Applicant suffered no damage from his suspension without pay. The Applicant was paid for the period between his suspension and his termination, and therefore he suffered no financial loss. The Commissioner-General issued an official communication to the Applicant clearing him of the charges of misconduct on which the suspension was based, and therefore the Applicant's reputation was not harmed.

2. The Respondent properly terminated the Applicant's appointment in the interest of the Agency, pursuant to area staff regulation 9.1 and the terms of the Applicant's letter of appointment. The Respondent has wide discretion to terminate a staff member's appointment in the interest of the Agency. The Respondent's decision was not improperly motivated.

The Tribunal, having deliberated from 8 July to 4 August 1998, now pronounces the following judgement:

I. Following a career of some 25 years with UNRWA, the Applicant was on 1 September 1993, appointed, initially on a probationary basis, the Principal of Siblin Training

Centre (STC). He had, during that 25 year period, enjoyed an unblemished career, he had made considerable advancement up the promotional ladder and his personnel record showed him to have received various recommendations and accolades and to have been a diligent and satisfactory employee.

II. On 3 November 1994, having satisfactorily completed his probationary period in the post of Principal he was confirmed therein. In that position, he enjoyed the written support and approval of the Chief, Field Education Programme (FEP) and the Director of UNRWA Affairs, Lebanon (UAL).

III. It has been alleged by the Applicant from the onset of these proceedings and has never been denied, that the Applicant and the Chief, FEP, had been involved in an intimate relationship over a period of 10 years, which according to the Applicant had been terminated at his instigation in 1991, when he married for a second time. This he considered to be of considerable relevance. He claimed that the Chief, FEP, had organized a malicious conspiracy against him and fabricated allegations against him. He considers that this background may constitute or explain her motive. The Tribunal takes the view that if there had been no such relationship, such allegation would have been denied.

IV. Commencing 28 February 1995, there were placed in the Applicant's personnel record, three letters of reprimand dated 28 February, 6 April and 30 June 1995, respectively, and a letter of censure dated 3 July 1995, all of which had either emanated from or been inspired by the Chief, FEP. The Tribunal is of the view that the subject of these letters is relatively insignificant or trivial and in some instances just petty, at least in comparison to what occurred thereafter and which the Tribunal refers to as the Student's Complaint.

V. The Student's Complaint was allegedly made by a then student or trainee (the "Student") at the STC that the Applicant had abused his position or authority as Principal thereof by seeking, under the guise of official duties, to lure the Student to a place where they would be free from observation, with intent to commence what the Student described as "a suspicious relationship". The allegations first surfaced in a letter from the Chief, FEP, to the Applicant dated 24 June 1995, instructing the Applicant to keep away from the Student. The Chief, FEP, reported on a number of occasions thereafter that the Student and members of her family had complained to her that the Applicant was attempting to force the Student to withdraw her complaint against him.

The Applicant has, from the outset, denied that there was any substance to the Student's Complaint, or that an event of the sort complained of by her or any like event had ever occurred or that he had ever sought to approach the Student or any member of her family to have her withdraw or alter her complaint.

VI. On 4 July 1995, the Director, UAL, wrote to the Applicant advising him of the Student's Complaint. He informed the Applicant that it constituted a charge of misconduct or serious misconduct which, if proved, could result in his dismissal or termination, or other disciplinary measure. An investigation was to be conducted and, pending its outcome, the Applicant was suspended from duty without pay.

VII. On 10 July 1995, the Director, UAL, again wrote to the Applicant informing him of the decision to hold a Board of Inquiry to look into the allegations raised against him and informed him of the composition of the Board. He further stated as follows:

> "3. The terms of reference are:
>
> + - The complaint raised by [the Student] against [the Applicant] accusing him of misconduct and any related irregularities and non compliance with Agency rules, regulations or norms.

- All attached documents.

4. The investigation should clarify the following:

- Establishing to the extent possible the factual circumstances of the allegations.

- Impact of this incident on the performance of the Center.

- Any related irregularities and non-compliance with the Agency rules, regulations and norms." (Emphasis added)

VIII. On the same day, 10 July, the Student signed a statement withdrawing the complaint that she had made against the Applicant. According to this statement, everything that she had previously written against the Applicant was untrue and without foundation. Further, in her statement, she explained that she had made a false complaint against the Applicant under psychological pressure from rumour mongers both within and outside the STC. She further stated that she had now found out that she had been used as a tool by them for their own personal aims.

IX. Notwithstanding the withdrawal of the Student's Complaint, the Board of Inquiry commenced its hearings and deliberations. It did not see fit to enquire into matters other than that of the Student's Complaint.

The Tribunal finds it strange that the Board of Inquiry continued its investigation of a complaint that had been withdrawn and an inquiry into how such complaint impacted on the performance of the STC. And yet it did continue such investigation, and it duly reported, on 21 August 1995, on the results of its inquiries. The Board does not appear to have interviewed the Student or any member of her family or to have caused her or any member of her family to be interviewed nor do they appear to have been called as witnesses before the Board.

X. In the view of the Tribunal, the report of the Board of Inquiry was extraordinary in that notwithstanding that it had not called the Student or a member of her family as a witness or caused her or any members of her family to be heard or even interviewed, it found that the Applicant had exercised pressure which had resulted in the withdrawal of the Student's Complaint. In fact, it appears that the Applicant had requested the Board to call four members of the Student's family but the Board had declined. It perversely took the view that the allegations made by the Chief, FEP, and by the Student's family "confirm[ed] the persistence of [the Student], her mother and her elder sister on following up the complaint and confirm[ed] the pressure [the Applicant] ha[d] exercised on the family, which appear to have succeeded in the withdrawal of the complaint." The Board of Inquiry then made a further remarkable finding, that "such pressures to withdraw the complaint would not have been exercised unless the Applicant was at fault and afraid of its consequences."

XI. The Tribunal is satisfied that such an approach to the issue of the Student's Complaint was perverse and wholly erroneous and that not only was there a reversal of the onus of proof but that this perverse approach is consistent only with a bias or prejudice on the part of the Board of Inquiry against the Applicant and demonstrative of prejudice against him. The Board had, in effect, resolved this most central and serious issue against the Applicant wholly without evidence and without affording the Applicant any opportunity of confronting his accusers or defending the allegations. In effect, the Board had found that the Applicant had applied pressure because it accepted that some members of the Student's family had accused him of attempting to exert pressure. It further found that, because it believed without evidence that he had sought to exert pressure, there was some truth in the Student's Complaint, even though it had been withdrawn and she herself had said that the content was false.

XII. The Tribunal is of the view that so profound is the bias that has been demonstrated by the Board of Inquiry in relation to that issue, that its findings in relation to the other secondary and less serious complaints cannot be accepted as uncontaminated. Accordingly, those findings cannot be allowed to stand. The Tribunal further notes that the findings of the Board of Inquiry in relation to the secondary and less serious issues stand in sharp contrast with the character and capacity of the Applicant as shown by his 25 previous years of blameless and satisfactory service and appear quite inconsistent with the picture presented. The fact that he was acknowledged to have performed satisfactorily in his probationary year (in fact more than a year) as the Principal of the STC and that the Chief, FEP, who was one of his principal detractors, had expressed satisfaction with his performance during the probationary period and had recommended that he should be confirmed in that post, rest uneasily beside the complaints she so soon thereafter was making against him. It seems unlikely, in the view of the Tribunal, that a staff member whose behaviour had been exemplary until February 1995, could have reasonably merited the findings that the Board of Inquiry made against him on those secondary and lesser complaints.

XIII. On 18 September 1995, the Director, UAL, wrote to the Applicant stating that, in the light of the Board of Inquiry's findings, he had lost confidence in the Applicant's ability to continue in his position as Principal of the STC and therefore decided to terminate his appointment, "in the interest of the Agency" with effect from the close of business on the date of that letter. He cited as reasons the Board's findings in relation to what the Tribunal has described as the secondary, less serious complaints or charges. The Tribunal further wishes to express its doubts as to whether these findings could, in themselves, be considered either grave enough or specific enough to have warranted summary termination.

XIV. The Joint Appeals Board (JAB) found that the Board of Inquiry's finding that the Applicant had pressured the Student into the withdrawal of her complaint had been made

wholly without evidence. Upon examination of the evidence which had been before the Board of Inquiry, the JAB concluded that the conduct alleged against the Applicant in the Student's Complaint was unlikely to have occurred. The JAB further concluded that it was more likely to be a false complaint as a result of a conspiracy which had involved the Chief, FEP. It described the Board of Inquiry's finding that "the Applicant was at fault and afraid of the consequences" as strange and as the product of "jump[ing] to strange conclusions".

XV. The JAB was silent on or at least failed to deal specifically with, the secondary, less serious charges. It concluded somewhat cryptically: "the atmosphere that was created by the case [i.e. the Student's Complaint] reflected negatively on the Applicant's performance."

The JAB recommended that "all the measures taken against the Appellant starting with his suspension without pay and ending with the termination of his appointment, be reversed and amended. ... [and] that the Agency must morally compensate the Appellant by declaring him clear in the case of the Student ...".

XVI. By letter of termination dated 16 December 1996, the Commissioner-General stated, inter alia, that he:

(i) Accepted the JAB's findings and opinion that the allegations of impropriety by the Applicant against the Student were fabricated and unsupported by evidence and declared the Applicant clear of impropriety in relation to her.

(ii) Declined to accept the JAB's reasoning that the Applicant should not have been suspended pending the findings of the Board of Inquiry because the allegations which had been made were serious ones and suspension was appropriate.

The Tribunal agrees with his conclusion in this regard and further notes that when the Applicant was cleared in respect of the Student's Complaint (which was the sole cause for his being suspended without pay), the Respondent paid him from the date of his suspension onward.

XVII. The Commissioner-General rejected the recommendation of the JAB to review and reverse the decision to terminate the Applicant's service as the JAB had "ignored the findings of the Board of Inquiry that although [the Applicant] had not committed any misconduct vis-à-vis the Student, [he] had nonetheless committed serious and numerous irregularities as Principal which justified the decision to terminate [his] services." Accordingly, he rejected the JAB's recommendation in that regard.

XVIII. The Tribunal is satisfied that the JAB had not consciously or intentionally ignored the other less serious charges. It may be that the JAB construed the Terms of Reference so that they did not consider them to have been any longer relevant in the light of their findings on the Student's Complaint, or it may be that they considered that they were dealt with adequately by the opinion expressed that "the atmosphere that was created by the case reflected negatively on the Appellant's performance."

XIX. The Tribunal is, however, satisfied that it was not open to the Commissioner-General to have taken the view that the JAB had acquiesced in, let alone approved, the Board of Inquiry's findings on the secondary or less serious charges. If the JAB had done so, it would have so stated and would not have baldly recommended that the decision to terminate his services be reversed. The Tribunal is further satisfied that the Respondent was not entitled to act on the Board of Inquiry's findings on the secondary charges and rely on them as grounds for termination, as the Tribunal is satisfied that those findings were contaminated by bias and prejudice of a profound nature, as demonstrated by the Board of Inquiry's findings in relation to the Student's Complaint, and that it would be unjust and oppressive to allow that decision to stand.

XX. For the foregoing reasons, the Tribunal:

1. Finds in favour of the Applicant and orders the rescission of the decision of the Respondent, dated 16 December 1996, to terminate the Applicant's permanent appointment.

2. Orders, in accordance with article 9 of its Statute, that the Applicant be reinstated in a position with the same grade and at the same step that he held when he was separated, with full payment of salary and emoluments from the date of his separation from service, less his earnings from other employment, if any.

3. Should the Commissioner-General, within 30 days of the notification of this judgement decide, in the interest of the Agency, that the Applicant shall be compensated without further action being taken in his case, the Tribunal fixes the compensation to be paid to the Applicant at two years of his net base salary, at the rate in effect on the date of his separation from service.

4. Rejects all other pleas, including the Applicant's request for costs.

(Signatures)

Hubert THIERRY
President

Julio BARBOZA
Member

Kevin HAUGH
Member

Geneva, 4 August 1998

R. Maria VICIEN MILBURN
Executive Secretary